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FILED
DISTRICT COURT OF GUAM
MAR 22 2005
MARY L.M. MORAN
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By JEHAN'AD. G. MARTINEZ

Attorneys for Defendant Imperial Suites, Inc.

IN THE DISTRICT COURT OF GUAM

LA-RESA BLAS,)	CIVIL CASE NO. CV03-00027
)	
Plaintiff,)	
)	
vs.)	
)	
IMPERIAL SUITES, INC., d/b/a)	DEFENDANT'S TRIAL BRIEF
IMPERIAL SUITES HOTEL and BONG)	
ROBATO,)	
)	
Defendants.)	

COMES NOW Defendant IMPERIAL SUITES, INC. (hereinafter "Imperial") and pursuant to Local Rule of Practice for the District Court of Guam LR16.7, herein files its Trial Brief.

FACTUAL CONTENTIONS

This case arises out of alleged sexual harassment by an Imperial supervisor, which resulted in a substantial, detrimental effect on Plaintiff's employment, such that it "created such intolerable working conditions" as to "force" Plaintiff to "leave her employment." As a result, Plaintiff filed an EEOC complaint, which failed to resolve the dispute, and which ultimately resulting in the instant lawsuit. Plaintiff's lawsuit was

1 originally brought against Imperial Suites Inc. dba Imperial
2 Suites Hotel and Bong Robato. The Court dismissed Bong Robato on
3 his motion to dismiss and Imperial continues to defend against
4 the remaining allegations.
5

6 Imperial intends to demonstrate that it had no notice of any
7 sexual harassment by Bong Robato prior to Plaintiff's allegations
8 on April 3, 2002. It will also demonstrate that Plaintiff's
9 facts are untrue, that she was employed for seven days, and that
10 she her actions have been invented to retaliate against Imperial
11 and Bong Robato, because she was fired for poor job performance,
12 wearing inappropriate clothing, and poor punctuality.
13

14 ISSUES OF LAW

15 For Plaintiff to prevail on her hostile work environment
16 harassment claim against Imperial she must prove (1) a "pattern
17 of ongoing and persistent harassment severe enough to alter the
18 conditions of employment,." Elvig v. Calvin Presbyterian Church,
19 375 F.3d 951 , 959 (9th Cir. 2004)(citing Draper v. Coeur
20 Rochester, Inc., 147 F.3d 1104, 1108 (9th Cir. 1998)), (2) that
21 was both subjectively and objectively abusive, Fuller v. City of
22 Oakland, 47 F.3d 1522, 1527 (9th Cir.1995) (citation omitted),
23 and (3) that Imperial ratified or knew or should have known about
24 and in response to which it failed to take appropriate action,
25 Swenson v. Potter, 271 F.3d 1184, 1192 (9th Cir.2001).
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1 Mr. Robato is no longer a party to the lawsuit. Therefore,
2 Plaintiff is attempting to impose liability on Imperial for Mr.
3 Robato's alleged conduct. The Supreme Court has outlined a
4 framework for determining an employer's liability after the
5 Plaintiff has proven she has been subjected to a hostile
6 environment. "Within this framework, there are two, alternative
7 theories under which a plaintiff may establish an employer's
8 vicarious liability for sexual harassment. First, an employer is
9 vicariously liable for a hostile environment that "'culminates in
10 a tangible employment action.'" Elvig, 375 at 959 (citing
11 others).
12

13
14 In this case, the Plaintiff claims to have been sexually
15 assaulted when her supervisor kissed her and touched her breast.
16 She then claims to have run out of his office crying, whereupon
17 she filed criminal charges against the supervisor, and never
18 attempted to return to Imperial. Assuming, for argument sake
19 only, that these facts are true, there was no tangible employment
20 action taken by Imperial.
21

22 A tangible employment action is defined to be "a significant
23 change in employment status, such as hiring, firing, failing to
24 promote, reassignment with significantly different
25 responsibilities, or a decision causing a significant change in
26 benefits." Elvig, 375 F.3d at 960-61 (citing others). No such
27 action occurred here.
28

1 Since no "tangible employment action" has been taken,
2 Imperial may raise an affirmative defense by demonstrating: (1)
3 it exercised reasonable care to prevent and correct promptly any
4 sexually harassing behavior; and (2) Plaintiff unreasonably
5 failed to take advantage of any preventive or corrective
6 opportunities provided by Imperial or to avoid harm otherwise.
7 "Whether the employer has a stated antiharassment policy is
8 relevant to the first element of the defense. And an employee's
9 failure to use a complaint procedure provided by the employer
10 "will normally suffice to satisfy the employer's burden under the
11 second element of the defense." Elvig, 375 F.3d at 959 (citing
12 Nichols v. Azteca Rest. Enters., 256 F.3d 864, 877 (9th
13 Cir.2001)). "Moreover, even if a tangible employment action
14 occurred, an employer may still assert the affirmative defense if
15 the tangible employment action "was unrelated to any harassment
16 or complaint thereof." Id.

17 Here, an antiharassment policy existed and even under
18 Plaintiff 's version of the facts, she did not attempt to address
19 her grievances with the Imperial Hotel manager, Loli Robato.
20 Furthermore, prior to the incident, Imperial had no notice of
21 such conduct to give rise to liability.

22 Finally, absent evidence sufficient to show that Imperial
23 had notice, before the April 3, 2002, incident, of a hostile work
24 environment and that it failed to respond, Imperial can not be
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1 liable. Absent both (a) notice of actionable sexual harassment to
2 and (b) deficient response by the employer, an employer is not
3 liable for harassment by a coworker of the plaintiff. See
4 Swenson, 271 F.3d at 1191-92 (citing Burlington Indus. v.
5 Ellerth, 524 U.S. 742, 759 (1998)).
6

7 EVIDENTIARY PROBLEMS

8 Imperial's Hotel Manager, Lolita Robato, died last week.
9 The supervisor alleged to have perpetrated the sexual harassment,
10 Bong Robato, suffers from lapses in lucidity brought on by a
11 stroke in 2002. Furthermore, Imperial is not a going concern.
12 As a consequence of these facts, presentation and admission of
13 evidence will come with challenges too numerous to articulate.
14

15 ABANDONMENT OF ISSUES

16 Although not specifically an abandonment issue, the
17 dismissal of Bong Robato as a Defendant, should result in the
18 striking of Count II of the Complaint and all damages associated
19 therewith.

20 RESPECTFULLY SUBMITTED this 22nd day of March, 2005.
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25 BY: 

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